ATTORNEY FOR APPELLANT:

AARON J. EDWARDS
Columbus, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KENNETH GREENLEE, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A01-0607-CR-320
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause Nos. 03D01-0509-CM-1599, 03D01-0510-CM-1786, 03D01-0512-FC-2072

May 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Kenneth Greenlee, Jr., asserts his six-year sentence for Class C felony stalking of his ex-wife is inappropriate because the court did not find or give adequate weight to three mitigating circumstances. In light of the evidence, we find no error and we affirm.

FACTS AND PROCEDURAL HISTORY

On September 23, 2005, the State charged Greenlee with three misdemeanor crimes: invasion of privacy,[1] battery of Tiffany Kimberlin[2] resulting in bodily injury,[3] and public intoxication.[4]

On October 26, 2005, the State charged Greenlee with battery of Francis Boggs[5] resulting in bodily injury, a Class A misdemeanor.

On December 22, 2005, the State charged Greenlee with stalking his ex-wife, Cheryl Wright, as a Class C felony;[6] domestic battery of Wright as a Class A misdemeanor;[7] battery of Wright resulting in bodily injury as a Class A misdemeanor;[8] intimidation of Wright as a Class D felony;[9] attempted obstruction of justice as a Class D felony,[10] and seventeen counts of invasion of privacy.

On June 12, 2006, Greenlee pled guilty to battering Kimberlin, a Class A misdemeanor; battering Boggs, a Class A misdemeanor; stalking Wright, a class C

[1] Ind. Code § 35-46-1-15.1(1) defines invasion of privacy as a Class A misdemeanor.
[2] Kimberlin is the daughter of Greenlee's ex-wife.
[3] Ind. Code § 35-42-2-1(a)(1)(A) defines this crime as a Class A misdemeanor.
[4] Ind. Code § 7.1-5-1-3. As charged, this crime was a Class B misdemeanor.
[5] Boggs is a friend of Greenlee's ex-wife, Cheryl Wright.
[6] Ind. Code § 35-45-10-5(a).
[7] Ind. Code § 35-42-2-1.3.
[8] Ind. Code § 35-42-2-1(a)(1)(A).
[9] Ind. Code § 35-45-2-1(a)(1).
[10] Ind. Code § 35-44-3-4(a)(1)(A).

felony; domestic battery of Wright, a Class A misdemeanor; and invasion of privacy as a Class A misdemeanor.

For battery of Kimberlin, the court sentenced Greenlee to one year in jail, to be served consecutive to all other sentences. For battery of Boggs, the court sentenced Greenlee to one year in jail, to be served consecutive to all other sentences, but the court suspended this sentence. For stalking, the court sentenced Greenlee to six years in the Department of Correction and ordered the sentence served consecutive to all others. For domestic battery and invasion of privacy, the court ordered one-year sentences, to be served consecutive to each other and all the other sentences, but then the court suspended those two years. Therefore, Greenlee's total sentence was ten years, with three years suspended to probation.

DISCUSSION AND DECISION

We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). An advisory sentence may be modified so long as it is within a range of years between the minimum and maximum terms. *See* Ind. Code §§ 35-50-2-3 to -7. Under Ind. Code § 35-38-1-7.1, a trial court may consider enumerated aggravating circumstances and mitigating circumstances in determining specific sentence terms. However, the trial court "may impose any sentence that is . . . authorized by statute . . . regardless of the

presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). If the trial court finds aggravating and mitigating circumstances, a sentencing statement must set forth specific reasons supporting the sentence the court imposes. Ind. Code § 35-38-1-3. The defendant has the burden to persuade us that his sentence is inappropriate. *McMahon v. State*, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006).

"A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years." Ind. Code § 35-50-2-6. Because Greenlee's sentence for Class C felony stalking is six years, his sentence is authorized by statute.

Nevertheless, Greenlee claims his sentence is inappropriate because he "accepted responsibility for his actions, pled guilty, and presented evidence of mental illness." (Appellant's Br. at 8.) However, our review of the record uncovered evidence that undermines the validity of or weight to be given to each his alleged mitigators.

When a defendant challenges the trial court's findings of mitigating circumstances, we apply the following standard of review:

> With respect to mitigating factors, it is within a trial court's discretion to determine both the existence and the weight of a significant mitigating circumstance. Given this discretion, only when there is substantial evidence in the record of significant mitigating circumstances will we conclude that the sentencing court has abused its discretion by overlooking a mitigating circumstance. Although the court must consider evidence of mitigating factors presented by a defendant, it is neither required to find that any mitigating circumstances actually exist, nor is it obligated to explain why it has found that certain circumstances are not sufficiently mitigating. Additionally, the court is not compelled to credit mitigating factors in the same manner as would the defendant. An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant on appeal to establish that the

mitigating evidence is both significant *and* clearly supported by the record. *Pennington v. State*, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005).

Greenlee claims he accepted responsibility for his actions, but Wright testified she did not believe he had taken responsibility because, in the letters he sent to her, he wrote the things he had done were Wright's fault because she did not know how to deal with a person with a mental health problem. (*See* Tr. at 37.) In addition, in an interview with a psychiatrist, Greenlee described punching Wright in the eye as an "accident" because he had no recollection of hitting her. (*Id.* at 21.) Those statements do not suggest Greenlee has accepted responsibility for his criminal acts. We cannot find the court abused its discretion by rejecting this alleged mitigator and instead finding: "You show no remorse for your actions. It's, it's [sic] everybody else's fault. It's not your fault." (Tr. at 41.)

The evidence regarding the extent and impact of Greenlee's mental illness was also conflicting. Greenlee testified he had been diagnosed "[s]chizophrenic, bi-polar, P-T-S-D . . . short term memory loss[, and] personality disorders." (Tr. at 11.) One psychiatrist opined Greenlee did not meet the criteria for schizophrenia because "the onset of symptoms was quite late, the symptoms themselves are unclear, and the history of these symptoms is inconsistent." (Ex. A at 5.) That psychiatrist believed Greenlee may have had some unspecified type of psychosis when he committed these crimes, but nevertheless had the ability to appreciate the wrongfulness of his behavior. Another counselor questioned the reliability of Greenlee's report of his symptoms. Therefore, we

find no abuse of discretion in the court's rejection of this alleged mitigator.[11]

As for Greenlee's guilty plea, we note a guilty plea "is not automatically a significant mitigating factor." *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). In fact, "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 995 (Ind. 2006). In exchange for his pleas of guilty to five crimes, the State dismissed twenty-one other charges. Therefore, we find no error in the finding Greenlee's pleas were "a wash," (Tr. at 42), because Greenlee had been charged with more than twenty crimes and "derived a significant benefit from pleading guilty." (*Id.* at 41-42.)

Finally, Greenlee asserts his six-year sentence is inappropriate in light of those three alleged mitigators and the fact his "offense of stalking was not remarkable." (Br. of Appellant at 10.) We cannot agree the sentence is inappropriate. Wright saw Greenlee in a public place only once, and the remainder of his contact with her consisted of letters or telephone calls. But his stalking continued for months. As for his character, Greenlee has amassed a substantial criminal history. Since 1980, Greenlee had been convicted of three counts of disorderly conduct as a Class B misdemeanor, five counts of public intoxication as a Class B misdemeanor, one count of criminal conversion as a Class A misdemeanor, two counts of operating a motor vehicle while under the influence as Class

[11] The court found, "The mental health evaluations all indicate that you have the ability to understand right and wrong and that you go out and do things anyway." (Tr. at 41.)

A misdemeanor, four counts of battery as a Class A misdemeanor, one count of resisting law enforcement as a Class A misdemeanor, one count of invasion of privacy as a Class B misdemeanor, and one count of trespass as a Class A misdemeanor. At sentencing the trial court noted ten protective orders, involving a number of different people, had been issued against Greenlee. In light of his character, we see nothing inappropriate about a sentence halfway between the advisory sentence and the maximum sentence for a Class C felony.

Affirmed.

MATHIAS, J., and NAJAM, J., concur.